

EXHIBIT “C”

LEONELA HERRERA
HERRERA vs FIRST NATIONAL BANK OF OMAHA

September 28, 2017

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEONELA ARACELY VALDEZ HERRERA,

Plaintiff,

vs.

FIRST NATIONAL BANK OF OMAHA,
N.A.,

Defendant.

Case No. 2:17-cv-01136-
RSWL-SK

DEPOSITION OF
LEONELA ARACELY VALDEZ HERRERA

Thursday, September 28, 2017

6:05 p.m.

1990 South Bundy Drive, Suite 540,
Los Angeles, California

Jasmine Jamili, CSR NO. 13742

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DEPOSITION OF LEONELA ARACELY VALDEZ HERRERA

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LEONELA ARACELY VALDEZ HERRERA,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. ROONEY:

Q. Hi, Ms. Herrera -- is that right?

A. Valdez.

Q. Valdez. Okay. My name is Cory Rooney. I'm an attorney for First National Bank of Omaha. I'm going to have you state and spell your name for the record, if you would.

A. Leonela Aracely Valdez Herrera. Do you want me to spell --

Q. Just the first and last name, yeah.

A. L-e-o-n-e-l-a. Last name is V-a-l-d-e-z.

Q. Okay. Thank you. Have you had your deposition taken before?

A. No.

Q. Okay. I'm just going to go over a few ground rules. The court reporter just swore you in, and you're going to tell the truth here today; correct?

A. Yes.

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1 Q. And she's also typing everything that we say,
2 so if I'm asking a question, I just ask for you to let
3 me finish it even if you think you know the answer of
4 what I'm asking the question. That way she's not typing
5 both of us talk at the same time, and I'll do the same
6 for you.

7 Is that fair?

8 A. Yes.

9 Q. Okay. Also, at any point if you need to take
10 a break or anything, I just request that you let me ask
11 the question and you finish answering before a break.

12 Is that fair?

13 A. Yes.

14 Q. And if there's something I say or ask that you
15 don't understand, before answering I just request that
16 you ask me to reword the question so that you understand
17 it better.

18 Is that fair?

19 A. Yes.

20 Q. Okay. Is there any reason today that you
21 can't give testimony? Are you under any medication or
22 anything like that?

23 A. No.

24 Q. Okay. What's your date of birth, Ms. Valdez?

25 A. [REDACTED].

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1 Q. And what is your current residence?

2 A. [REDACTED]

3 Q. And how long have you resided there?

4 A. I think almost like four years, four or five.

5 Q. Okay. And what's your current telephone
6 number?

7 A. [REDACTED]-6948.

8 Q. And is that a cell phone?

9 A. Yes.

10 Q. And how long have you had that number?

11 A. I don't recall. I want to say at least eight
12 years, ten years. I'm not sure.

13 Q. That's fine. Any other numbers?

14 A. No.

15 Q. No home phone or anything like that?

16 A. No.

17 Q. Does anybody live with you?

18 A. My kids.

19 Q. And I don't need their names or anything like
20 that but what are their ages?

21 A. 7 and 5.

22 Q. And what's the last four of your social
23 security number?

24 A. [REDACTED].

25 Q. Okay. Do you recognize the number [REDACTED]

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1 [REDACTED]-2888?

2 A. Yes.

3 Q. And what number is that?

4 A. It's my work.

5 Q. And where do you work at?

6 A. [REDACTED]

7 Q. How long have you worked there?

8 A. Three years.

9 Q. And the number ending in 2888 is your work
10 number?

11 A. It's the main [REDACTED] number, yes.

12 Q. Okay. I'm going to hand you what I've marked
13 as Exhibit 1.

14 Have you seen this document before?

15 A. Yes.

16 (Defendant's Exhibit 1 was marked for
17 identification and attached hereto.)

18 Q. And on the second page, it asked you to bring
19 some documents with you. And your attorney has already
20 provided some documents to me, but I'm just asking if
21 you brought any other documents with you here today?

22 A. No.

23 Q. Okay. And I'll represent that this is the
24 notice to take your deposition that brings us all here
25 today; is that correct?

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1 A. Yes.

2 Q. And you can go ahead and set that aside.

3 A. Okay.

4 Q. Obviously, we're here today because you've
5 sued my client First National Bank of Omaha; correct?

6 A. Yes.

7 Q. And you had at one point a credit card with
8 First National Bank of Omaha; correct?

9 A. Yes.

10 Q. Do you recall applying for that credit card?

11 A. Yes.

12 Q. And how did you apply for that credit card?

13 A. I believe it was online.

14 Q. Online?

15 A. Yes.

16 Q. Okay. And do you recall roughly how long ago
17 that was?

18 A. No. Maybe two years, three years. I'm not
19 sure.

20 Q. Okay. That's fine. And do you recall what
21 kind of credit card that was? And I ask that was it
22 just a regular credit card or do you have to put some
23 money or a deposit --

24 A. It was a secured credit card. I put a
25 deposit.

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1 Q. Okay. And you applied for that card online?
2 That's your recollection?

3 A. Yes.

4 Q. Okay. I'm actually going to number this one 5
5 just so I don't have to scratch everything out here.
6 I'm going to hand you what's been marked now as
7 Exhibit 5, and I'm going to represent to you that this
8 Exhibit 5 is the online application information that
9 First National Bank of Omaha received for your credit
10 card. Okay? And if we look at the first page, it says,
11 "APPLICANT INFORMATION."

12 Do you see that?

13 A. Yes.

14 (Defendant's Exhibit 5 was marked for
15 identification and attached hereto.)

16 Q. And in the second name category -- the first
17 name category is blank -- is that your name?

18 A. Yes.

19 Q. And it has a social security number ending in
20 [REDACTED].

21 Is that your social security number?

22 A. Yes.

23 Q. And then the address, I believe, is what you
24 said earlier, the [REDACTED].

25 Is that your address?

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1 A. Yes.

2 Q. And the date of birth [REDACTED] -- is that
3 your date of birth?

4 A. Yes.

5 Q. It has a principal mother's name, and it has
6 Herrera.

7 Is that your mother's name?

8 A. Yes. It's her maiden name.

9 Q. Okay. And then right below that category,
10 there's an "HP" with a number sign, and I'm going to
11 represent to you that that stands for home phone number.

12 Is that your home phone number?

13 A. No. That's my cell phone.

14 Q. I'm sorry. Thank you for clarifying that.
15 You don't have an actual home phone number; right?

16 A. No.

17 Q. And that number ends in 6948; correct?

18 A. Yes, correct.

19 Q. And the next category to the right of that is
20 a "BP," which stands for business phone. That one ends
21 in 2888, and is that the business phone for your --

22 A. Yes, my work.

23 Q. -- current employer? Okay. Do you recall
24 providing those two phone numbers when you applied for
25 this credit card?

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1 A. Yes.

2 Q. Okay. And then at the bottom left-hand side
3 there, there's a category that says "EML."

4 Do you see that?

5 A. Yes.

6 Q. And that stands for e-mail.

7 Is that your e-mail address?

8 A. Yes.

9 Q. Okay. And if you just quickly turn to the
10 third page? Again, it has a primary applicant
11 information, and it has a lot of the categories we just
12 discussed.

13 As a current employer on the left side, the
14 [REDACTED] -- is that still your current employer?

15 A. Yes.

16 Q. And, again, it has an "HP" on the right side,
17 the one ending in 6948, and that's actually your cell
18 phone number; correct?

19 A. Yes.

20 Q. Okay. You can set that aside. Thank you.
21 Ms. Valdez, what's your understanding as to what this
22 lawsuit is all about?

23 A. Well, I know that there are some laws that
24 protects consumers against calls -- unwanted calls,
25 especially when asked to stop.

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1 Q. Okay. Anything else?

2 A. No.

3 Q. Okay. I'm going to hand you what's been
4 marked as Exhibit 2. Take a moment to look at that.
5 Have you had a chance to review Exhibit 2?

6 A. Yes.

7 (Defendant's Exhibit 2 was marked for
8 identification and attached hereto.)

9 Q. Have you seen that document before?

10 A. Yes.

11 Q. I'm going to represent to you that that's the
12 complaint that's filed in this case, and that was filed
13 on February 13, 2017. And I want you to turn to page
14 three, and do you see where it says "FACTUAL
15 ALLEGATIONS" at the top?

16 A. Yes.

17 Q. On paragraph 13 on page three it says, In
18 2016, and specifically within one year prior to the
19 commencement of the present action, defendant -- and
20 then defendant again constantly and continuously placed
21 collection calls to Plaintiff's cellular phone number
22 ending in 6948.

23 Do you see that?

24 A. Yes.

25 Q. Okay. Is that true?

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1 A. Yes.

2 Q. And then I want you to look at paragraph 16.
3 It says, "On or around January 4, 2017 at 7:15 p.m.,
4 Plaintiff received a call from Defendant from telephone
5 number (800) 537-3302."

6 Do you see that?

7 A. Yes.

8 Q. And is that true?

9 A. Yes.

10 Q. Okay. And then the next paragraph, paragraph
11 17, it says. "In the course of the telephone
12 conversation on or around January 4, 2017 at 7:15 p.m.,
13 Plaintiff spoke with Defendant's representative, 'Jodi,'
14 and requested that Defendant cease calling her cellular
15 phone."

16 Is that true?

17 A. Yes.

18 Q. And do you recall that conversation?

19 A. Yes.

20 Q. And can you tell me in your own words the
21 essence of that conversation?

22 A. Well, the conversation was short. I answered
23 the call. It was a representative. I asked her -- I
24 believe I asked her name. She said this is Jodi about
25 the Omaha, and I simply just said stop calling me, and I

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1 ended the call.

2 Q. Okay. At any point in that conversation did
3 you identify yourself as Leonela Valdez Herrera?

4 A. I don't recall, no.

5 Q. Do you recall her asking who she was speaking
6 to?

7 A. Yes.

8 Q. And did you answer the question?

9 A. Yes.

10 Q. And you identified yourself as Leonela Valdez
11 Herrera?

12 A. Yes.

13 Q. And then after you had that conversation, did
14 you speak with First National Bank of Omaha again?

15 A. No.

16 Q. And if we look at 19, if you could just read
17 that? I don't want to burn the court reporter's hands
18 here but paragraph 19 -- if you read that, I'll ask you
19 some questions about that.

20 A. Okay.

21 Q. And I'm going to paraphrase here. You can
22 correct me if I'm wrong, but it says despite your
23 request for First National to stop calling, First
24 National continued to call you from January 5th, 2017,
25 to February 3rd, 2017, approximately 42 times; is that

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1 correct?

2 A. Yes.

3 Q. And while these 42 calls were being placed,
4 were you around the phone, or how did you know these
5 calls were being placed by First National?

6 A. I knew the number because, like I said, I had
7 gotten various calls, and, yes, I was aware of the
8 calls. I would just ignore them.

9 Q. You would just hit ignore?

10 A. Yes.

11 Q. Is there any reason why you didn't pick it up
12 and request that they don't stop calling again?

13 A. Most of the calls were during my work time, so
14 I was busy at work.

15 Q. Okay. Were you receiving any other calls from
16 creditors during this time?

17 A. I was, not many, but I think I was.

18 Q. Okay. Was there any particular reason why you
19 started missing your monthly minimum payment on this
20 card?

21 A. Yes. I just had some financial hardship.

22 Q. And approximately when did that occur?

23 A. I believe around October of 2016 -- October,
24 November.

25 Q. Okay. And then when did you go see your

1 current attorney?

2 A. I believe it was in January.

3 Q. In the early part of January, mid January,
4 or --

5 A. I don't recall.

6 Q. Okay. I'm going to hand you -- staying with
7 the out of order theme here -- Exhibit 4.

8 A. Okay.

9 (Defendant's Exhibit 4 was marked for
10 identification and attached hereto.)

11 Q. First of all, have you seen Exhibit 4 before?

12 A. Yes.

13 Q. And I'll represent to you that these are some
14 discovery responses that I received from your attorney
15 which I've lumped together of interrogator responses and
16 request for production of document responses.

17 And did you help with the preparation of these
18 answers?

19 A. Yes. I answered them.

20 Q. Okay. Now, if you look at the second page,
21 which is titled at the top "RESPONSES TO
22 INTERROGATORIES," Question 1 is a pretty simple
23 question. It's asking about your telephone number and
24 who the provider was, and the response is the number
25 ending in 6948, and we've discussed that.

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1 And is T-Mobile your cell phone provider?

2 A. Yes.

3 Q. Have they always been your provider with that
4 number?

5 A. Yes.

6 Q. And then the second case asked when you met
7 with or consulted with your attorneys representing you
8 in this case, and after some objections, the answer is
9 October 26th, 2016.

10 Do you see that?

11 A. Yes.

12 Q. Did you meet with your attorneys in October of
13 2016?

14 A. I believe I spoke to them, but I didn't meet
15 with them, no.

16 Q. Okay. And what was the purpose of speaking
17 with them? And I don't want to know the contents of
18 your conversation, but I want to know what you talked to
19 your attorneys about.

20 A. I called first asking regarding advice on my
21 bankruptcy case and then on also the collection calls
22 that I was receiving.

23 Q. Okay. Have you filed bankruptcy?

24 A. Yes.

25 Q. And when did you file bankruptcy?

1 A. You want the discharged date or the filing
2 date?

3 Q. The filing.

4 A. I believe it was in April, I want to say. I
5 can't recall.

6 Q. Of this year?

7 A. Of this year, yes.

8 Q. Okay. And you have since received a
9 discharge?

10 A. Yes.

11 Q. And do you recall what that date is?

12 A. July 3rd, I think.

13 Q. Okay. And then if we're going to scroll back
14 to the back pages, the request for production of
15 documents are just towards the back. Really I just want
16 to ask you about the attachment, the very last couple of
17 pages.

18 Are you familiar with Exhibit A in the back?

19 A. Yes.

20 Q. And what is Exhibit A?

21 A. It is a call log of all of the collection
22 calls I was receiving from First National Bank.

23 Q. And who created this call log?

24 A. I did.

25 Q. And at the top it has a "from" -- and I don't

1 mean to mispronounce this, but is it Aracely?

2 A. Aracely.

3 Q. Aracely Valdez -- who is that?

4 A. It's me.

5 Q. Is that another name you go by or is that --

6 A. It's my middle name.

7 Q. Oh, okay. And is that your work address?

8 A. That's my work e-mail, yes.

9 Q. And you are sending these to who?

10 A. I forwarded it to my personal e-mail because
11 that's where I had my attorney's e-mail address.

12 Q. Okay. And when you did you create this call
13 log?

14 A. I created it approximately in January when I
15 had asked them to stop calling me and they didn't, so I
16 just started keeping log of the calls.

17 Q. Okay. And did you have like handwritten notes
18 that you transferred onto this or --

19 A. Yes.

20 Q. Okay. And do you still have those notes?

21 A. No.

22 Q. Were you keeping call logs for any other
23 creditors that were calling you?

24 A. No.

25 Q. Okay. You can put that aside. I want to go

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1 back to the call on January 4, 2017, where you stated
2 that you spoke to Jodi; correct?

3 A. Yes. That was the name she said she was.

4 Q. And Jodi asked who she was speaking with;
5 correct?

6 A. Yes.

7 Q. And you recall stating your name; correct?

8 A. I didn't state my name. I just confirmed.

9 Q. Can you explain that to me? What do you mean
10 you confirmed?

11 A. Well, I don't recall the whole conversation.
12 Like I said, it was short. She asked to speak with me,
13 and then I said yes. And then I said stop calling me,
14 and then I ended the call.

15 Q. And did you hear Jodi, the First National Bank
16 representative, say anything after you said do not call
17 or stop calling or whatever you said?

18 A. No. I hung up the call.

19 Q. We're going to listen to that call.

20 (Whereupon phone conversation played.)

21 MR. ROONEY: And then there's dead air.

22 BY MR. ROONEY:

23 Q. Ms. Herrera, I've listened to that call
24 several times, and I never heard the person on the other
25 side of that call identify who they were.

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1 Did you hear that?

2 A. Yes. In the beginning she said Jodi.

3 Q. I'm sorry. I understand the representative
4 from First National identified herself as Jodi, but the
5 person on the other end never stated who they were.

6 Did you hear anything like that?

7 A. No. I just said stop calling me.

8 Q. And was that you on the other end of that
9 conversation?

10 A. Yes.

11 Q. Is there any reason that you didn't identify
12 yourself when that person, Jodi, called you?

13 A. No. Honestly, I was in the middle of eating
14 dinner with my kids, and I was frustrated with the
15 calls, and I answered quickly and told her to stop
16 calling me.

17 Q. Do you know how many times First National
18 called you before that January 4, 2017, call?

19 A. No, I didn't count the calls before that, but
20 it was at the same pace as it was afterwards.

21 Q. So they had called you several times before
22 that call?

23 A. Yes.

24 Q. And did you speak with them?

25 A. No.

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1 Q. Now, you can imagine that Jodi wasn't sure if
2 she was speaking to you.

3 Can you imagine that?

4 A. No. She's calling my phone number, so I
5 assume she knows who she's calling.

6 Q. Has anybody ever answered your phone before?

7 A. No.

8 Q. Can you imagine that Jodi wasn't positive that
9 it was you on the other line?

10 MR. ROSENTHAL: I'm going to object as calls
11 for speculation.

12 MR. ROONEY: You can answer.

13 THE WITNESS: Well, I don't know. I don't
14 know if she would -- I don't know why she would have
15 doubts if she's calling my phone number.

16 BY MR. ROONEY:

17 Q. And after that phone call, you never answered
18 a phone call from First National again; correct?

19 A. Correct.

20 Q. And you never wrote to First National or
21 instructed them any other time to stop calling; correct?

22 A. Correct.

23 Q. If you go back to Exhibit 2, if you grab that
24 again? Now, when we first started talking about this
25 phone call, you were pretty sure that you identified

1 yourself, but now that you've listened to it, do you
2 still think you identified yourself?

3 A. No.

4 Q. I want you to turn back to page six. This is
5 page six in Exhibit 2 which is the complaint filed in
6 this matter. If you look at paragraph 36 subparagraph
7 A -- and I'm going to paraphrase this, but it says,
8 Defendant violated Section 1788.11 subparagraph (D) by
9 causing your phone to ring repeatedly or continuously to
10 annoy the person called; is that correct?

11 A. Yes.

12 Q. And can you explain how First National was
13 calling you repeatedly and continuously to annoy you?

14 A. Well, after I asked them to stop calling, they
15 continued to call.

16 Q. And we're just referring to that January 4th
17 call where you never identified yourself; right?

18 A. Yes.

19 Q. And you never instructed them to stop calling
20 you again; correct?

21 A. After that date, no.

22 Q. Subparagraph B, again, Defendant violated a
23 section by communicating by telephone or in person with
24 the debtor with such frequency as to be unreasonable and
25 to constitute a harassment to the debtor under the

1 circumstances harassment.

2 Is that true?

3 A. Yes.

4 Q. And, again, that's because they called you
5 after the January 4th phone call?

6 A. It's -- yes, because they continuously kept
7 calling me after I asked them to stop.

8 Q. Okay. And that's enough for that. You're not
9 seeking any medical help or treatment based on First
10 National's actions, are you?

11 A. No.

12 Q. And have you experienced any sort of emotional
13 distress or anything like that based on First National's
14 actions?

15 A. During the time I was getting the calls, yes.

16 Q. And can you explain that to me?

17 A. Well, when I kept getting calls and I'm at
18 work and I keep seeing my phone ringing and they keep
19 calling and I had asked them to stop, it becomes
20 stressful.

21 Q. Okay. Any other creditors were calling you
22 during this time?

23 A. Maybe one other but not as frequent. Maybe
24 once a week.

25 Q. Okay. And was this 300-dollar secured account

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1 from First National the reason you filed bankruptcy?

2 A. Not the only reason, no.

3 Q. Because you had already gave the money to
4 First National; correct?

5 A. What do you mean by "gave the money"?

6 Q. As far as deposited money at First National
7 for this card?

8 A. Yes.

9 Q. Okay. Were there other reasons that prompted
10 you to file bankruptcy?

11 A. Yes. I had other debt.

12 Q. Okay. But you don't recall anyone else
13 calling but First National?

14 A. Yes.

15 Q. Okay.

16 MR. ROONEY: I just need a five-minute break.
17 We may be done quicker than I anticipated.

18 MR. ROSENTHAL: Okay.

19 (Break in the proceedings from 6:35 to 6:39 p.m.)

20 MR. ROONEY: Back on the record.

21 BY MR. ROONEY:

22 Q. Ms. Valdez, I think we've already discussed
23 and you probably already answered it, but I just want to
24 make sure I touch all my basis here. The application we
25 looked at earlier, those are the numbers you provided to

1 First National; correct?

2 A. Yes.

3 Q. And then the 42 calls that we were talking
4 about, those were to your cell phone?

5 A. Yes.

6 Q. Okay. And you mentioned you filed bankruptcy.
7 And if you know, was this case included in your
8 bankruptcy?

9 Do you know?

10 A. It was included.

11 Q. Okay.

12 MR. ROONEY: I have no further questions. I
13 don't know if you have anything?

14 MR. ROSENTHAL: No. We're good.

15 MR. ROONEY: Okay. Thank you, Ms. Valdez.
16 I'll need the original transcript.

17 (The deposition was concluded at 6:40 p.m.)

18 --oOo--

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REPORTER'S CERTIFICATION

I, Jasmine Jamili, a Certified
Shorthand Reporter in and for the State of California,
do hereby certify:

That the foregoing witness was by me
duly sworn; that the deposition was then taken before me
at the time and place herein set forth; that the
testimony and proceedings were reported stenographically
by me and later transcribed into typewriting under my
direction; that the foregoing is a true record of the
testimony and proceedings taken at that time.

That before the conclusion of the deposition,
the witness has not requested a review of this
transcript pursuant to Rule 30(e)(2).

IN WITNESS WHEREOF, I have
subscribed my name this 28th day of September, 2017.



Jasmine Jamili, CSR No. 13742

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DEPOSITION ERRATA SHEET

Our Assignment No. J0659769

Case Caption: Leonela Herrera vs. First National Bank

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the above captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of _____,
20____.

LEONELA ARACELY VALDEZ HERRERA

LEONELA HERRERA
HERRERA vs FIRST NATIONAL BANK OF OMAHA

September 28, 2017
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LEONELA ARACELY VALDEZ HERRERA

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